Supreme Court, U.S.
FILED
SEP 16 2005
OFFICE OF THE CLERK

No. 05-366

IN THE

SUPREME COURT OF THE UNITED STATES

In re David L. Smith,

Petitioner.

On Petition for a Writ of Mandamus and/or Prohibition to the United States Court of Appeals for the Tenth Circuit

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PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION

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QUESTION PRESENTED FOR REVIEW

Whether a circuit court of appeals may deny an attorney the right to apply for reinstatement to its bar for his failure (if any) to pay harsh and unjustified sanctions imposed against him more than twelve (12) years ago without due process of law.

LIST OF PARTIES

David L. Smith, Petitioner

United States Court of Appeals for the Tenth Circuit, Respondent

Tenth Circuit Judge Michael R. Murphy, Respondent

Tenth Circuit Judge Terrence L. O'Brien, Respondent

Tenth Circuit Clerk Patrick Fisher, Respondent

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TABLE OF CITED AUTHORITIES

Constitution of the United States,
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Constitution of the United States,
Amendment 5. . . . . 5, 7, 10

28 U.S.C. § 1654. 11

Plan for Attorney Disciplinary Enforcement
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the Tenth Circuit, Section 10.2. 9

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the Tenth Circuit, Section 10.5. . . . . 2, 6, 8, 10

In re David L. Smith, 10 F.3d 723 (10th Cir.),
cert. denied, 513 U.S. 807, *reh'g denied*,
513 U.S. 1033 (1994) 1, 3, 8

In Re David L. Smith, 76 F.3d 335 (10th Cir.),
cert. denied, 519 U.S. 988 (1996) 1

CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS

None.

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

The order sought to be reviewed was entered on August 30, 2005. The court of appeals specifically stated that "[n]o petition or motion for reconsideration of this order may be filed." The statutory provision believed to confer on this Court jurisdiction to review on mandamus and/or prohibition the order in question is 28 U.S.C. § 1651(a).

CONSTITUTIONAL PROVISIONS, ETC. INVOLVED IN THE CASE

Constitution of the United States, Amendment 1

Constitution of the United States, Amendment 5

Plan for Attorney Disciplinary Enforcement of the United States Court of Appeals for the Tenth Circuit, Section 10.5

Petitioner David L. Smith, acting by and through counsel, M. Julia Hook, hereby files his Petition for a Writ of Mandamus and/or Prohibition:

STATEMENT OF THE CASE

On July 8, 2005, David L. Smith, an attorney in Denver, Colorado, attempted to file the following Petition for Reinstatement and Request for Evidentiary Hearing, requesting to be reinstated into the bar of the United States Court of Appeals for the Tenth Circuit.

1. On November 29, 1993, the Tenth Circuit disciplinary panel suspended Smith from the practice of law in the Tenth Circuit. *See In re David L. Smith*, 10 F.3d 723 (10th Cir.), *cert. denied*, 513 U.S. 807, *reh'g denied*, 513 U.S. 1033 (1994).

2. On February 13, 1996, the Tenth Circuit disciplinary panel disbarred Smith from the practice of law in the Tenth Circuit. *See In re David L. Smith*, 76 F.3d 335 (10th Cir.), *cert. denied*, 519 U.S. 988 (1996).

3. The following courts have suspended and/or disbarred Smith based on the Tenth Circuit's suspension and/or disbarment orders: the United States District Court for the District of Colorado; the Colorado Supreme Court; the United States

District Court for the Northern District of Texas; and the United States Court of Appeals for the Fifth Circuit. These courts have refused to reinstate Smith into their bars despite numerous applications for reinstatement. Further applications would be futile without reinstatement into the Tenth Circuit bar.

4. The following courts have declined to suspend and/or disbar Smith based on the Tenth Circuit's suspension and/or disbarment orders: the Supreme Court of Texas and the United States Court of Appeals for the Federal Circuit. Smith is a member in good standing of the bars of these courts.

5. More than eleven years have expired from the effective date of the suspension by the Tenth Circuit disciplinary panel. More than nine years have expired from the effective date of the disbarment by the Tenth Circuit disciplinary panel.

6. Based on the foregoing facts, reinstatement is appropriate under section 10.5 of the Plan for Attorney Disciplinary Enforcement of the United States Court of Appeals for the Tenth Circuit. However, if the disciplinary panel is not so satisfied, Smith requests an evidentiary hearing by a special master on his petition for reinstatement.

On July 13, 2005, the Clerk of the Tenth Circuit dismissed Smith's Petition for Reinstatement and Request for Evidentiary Hearing, stating as follows:

. . .

> The petition is procedurally defective. In its opinion issued in 1993, the court stated, '[Smith] may apply for reinstatement to our bar when he can demonstrate that each sanction order of this court or the district court has been satisfied.' 10 F.3d at 724. The petition makes no such demonstration. Smith therefore may not apply for reinstatement. The 'Petition for Reinstatement and Request for Evidentiary Hearing' is accordingly DISMISSED.

On July 26, 2005, Smith filed the following Motion for Reconsideration and Request for Evidentiary Hearing.

> By Order dated July 13, 2005, a copy of which is attached hereto, this Court dismissed David L. Smith's Petition for Reinstatement and Request for Evidentiary Hearing, stating that 'the petition is procedurally defective' because it fails to 'demonstrate that each sanction order of this Court or the district court has been satisfied,' as required by this Court's suspension order issued in November of 1993.
>
> However, in late 1994 or early 1995, Mr. Smith's former attorney, Phillip S. Figa, submitted information to this Court in this case conclusively demonstrating that three out of four of these sanction orders have been satisfied through payment in full of these sanctions -- despite the fact that the sanctions were both harsh

and unjustified.[1] With respect to the sanction order in *Casillan v. Regional Transportation District*, this Court's disciplinary panel denied Mr. Smith's requests for an evidentiary hearing at which he would have had the opportunity to challenge the validity of this sanction order–a sanction order that this Court had previously refused to review on its merits.[2] Under these circumstances, Mr. Smith is entitled to, and should be afforded, an evidentiary hearing at which he has the opportunity to challenge the validity of the sanction order in *Casillan*. Alternatively, because of the numerous due process violations in this matter, Mr. Smith should not be required to demonstrate that the sanction order in *Casillan* has been satisfied before his Petition for Reinstatement is fully and fairly considered by this Court.

This Court's dismissal of Mr. Smith's Petition for Reinstatement and Request for Evidentiary Hearing violates section 10.5 of the Plan for Attorney Disciplinary Enforcement of the United

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[1]This information is incorporated herein by reference for all purposes.

[2]This Court's disciplinary panel also denied Mr. Smith's request for an evidentiary hearing at which he would have had the opportunity to present his defenses to the charge that he practiced law in this Court in violation of this Court's suspension order. Mr. Smith is therefore entitled to, and should be afforded, an evidentiary hearing at which he has the opportunity to present his defenses to this charge.